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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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812-0474

February 12, 1998

BY HAND DELIVERY

Magalie Roman Salas, Esquire

Secretary

Federal Communications Commission

1919 M Street, N.W., Room 222

Washington, DC 20554

Re: Reply Comments of Metro Broadcasters-Texas, Inc.
MM Docket No. 97-91; RM-9221
Lewisville, Gainesville, Robinson, Corsicana,
Jacksboro, and Mineral Wells, Texas

Dear Ms. Salas:

Transmitted herewith on behalf of Metro Broadcasters-Texas, Inc., are an original and four copies of its Reply Comments filed in the above-captioned proceeding in response to an application for a construction permit, filed November 25, 1996, by Jerry Snyder and Associates, Inc., licensee of Station KYXS(FM), Mineral Wells, Texas (File No. BPH-961125IG). See *Public Notice*, Report No. 2251 (released January 28, 1998).

Should any questions arise concerning this matter, please communicate directly with this office.

Sincerely,



Andrew S. Kersting

Enclosures

cc: Certificate of Service (w/ encl.)

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations)

(Lewisville, Gainesville, Robinson,)

Corsicana, Jacksboro, and)

Mineral Wells, Texas))

MM Docket No. 97-91

RM-8854

To: Chief, Allocations Branch

REPLY COMMENTS

Metro Broadcasters-Texas, Inc. ("Metro"), licensee of Station KHYI(FM), Howe, Texas, by counsel, hereby submits these comments in response to the application for a new construction permit, filed November 25, 1996 (File No. BPH-961125IG) (the "Application"), by Jerry Snyder and Associates, Inc. ("JSA"), licensee of Station KYXS(FM), Mineral Wells, Texas, which is being considered as a counterproposal in the above-captioned rulemaking proceeding.¹ In reply, the following is stated:

As set forth in the *Notice of Proposed Rule Making and Order to Show Cause*, 12 FCC Rcd 3059 (Chief, Allocations Branch 1997) ("*NPRM*"), Heftel Broadcasting Corporation ("Heftel")² currently has a proposal pending to amend the FM Table of Allotments by substituting Channel 300C1 for Channel 300C2 at Gainesville, reallocating Channel 300C1 to Lewisville, and modifying

¹ See *Public Notice*, Report No. 2251 (released January 28, 1998) ("*Public Notice*").

² Heftel is the permittee of Station KECS, Channel 300C2, Gainesville, Texas, and licensee of Station KICI, Channel 300C1, Corsicana, Texas. Unless otherwise indicated, all communities referenced herein are located in the State of Texas.

its construction permit for Station KECS to specify operation on Channel 300C1 at Lewisville. In addition, HefTel proposes the substitution of Channel 300A for Channel 300C1 at Corsicana, the reallocation of Channel 300A to Robinson, and modification of its license for Station KICI to specify operation on Channel 300A at Robinson. In order to accommodate its proposed reallocations, HefTel also proposes the substitution of Channel 237A for Channel 299A at Jacksboro and Channel 240C3 for Channel 240C1 at Mineral Wells. *NPRM* at ¶1.

As demonstrated in Metro's comments and reply comments filed in this proceeding on May 5 and May 20, 1997, respectively, the proposal set forth in the *NPRM* should not be adopted because HefTel failed to protect the existing Channel 240C1 allotment at Mineral Wells, Texas. *See* 47 CFR §73.202(b); *Report and Order* in MM Docket No. 90-555, 7 FCC Rcd 1791 (1992).

As set forth in the *NPRM* at ¶1, the substitution and allotment of Channel 300C1 to Lewisville is dependent upon the substitution and allotment of Channel 300A to Robinson. The allotment of Channel 300A to Robinson requires the substitution of Channel 237A for Channel 299A at Jacksboro, which, in turn, requires the downgrade of Channel 240C1 at Mineral Wells to Channel 240C3. *See* HefTel Comments, p. 11.

Section 73.207(a) of the Commission's rules provides that the Commission will not accept petitions to amend the Table of Allotments unless the reference points meet all of the minimum distance separation requirements. 47 CFR §73.207(a). Channel 237A cannot be substituted for Channel 299A at Jacksboro in compliance with the minimum distance separation requirements. As demonstrated in Exhibit 1 to HefTel's Petition for Rulemaking, filed July 26, 1996, the proposed substitution of Channel 237A at Jacksboro is 15.3 kilometers short-spaced to the Channel 240C1 allotment at Mineral Wells. Although the construction permit for the Channel 240C1 facility at

Mineral Wells expired some time ago,³ Heftel still is required to protect the Channel 240C1 allotment. *See, e.g., Eldorado and Lawton, Oklahoma*, 5 FCC Rcd 618 (Chief, Allocations Branch 1990) (NPRM) (subsequent history omitted). Indeed, the Commission does not delete a channel (or downgrade an existing allotment) where there is an expression of interest demonstrated by the filing of an application by the initial comment deadline, even where a construction permit has been forfeited and cancelled.⁴ *Driscoll, Gregory and Robstown, Texas*, 9 FCC Rcd 3580, n.3 (Chief, Allocations Branch, 1994) (NPRM) (subsequent history omitted). *See also Martin and Tiptonville, Tennessee*, 11 FCC Rcd 12695 (Chief, Allocations Branch 1996) (same). Because Heftel failed to protect the existing allotment of Channel 240C1 at Mineral Wells in accordance with Section 73.207 of the Commission's rules, and Heftel's proposal is contingent upon the substitution of Channel 240C3 for 240C1 at Mineral Wells, Snyder's Application should not be considered as a counterproposal in this proceeding. Instead, the Application should be granted, and this rulemaking proceeding should be terminated because Heftel's proposal cannot be adopted in accordance with the FCC's rules.

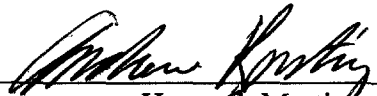
³ As explained in Metro's Comments and Counterproposal, filed May 5, 1997 ("Comments"), JSA's efforts to construct its Class C1 facilities for KYXS(FM), Mineral Wells, were frustrated by the death of the property owner of JSA's proposed transmitter site, and the fact that his widow and son were unwilling to make the property available to JSA while the property was in the deceased's estate. Although JSA's efforts to find an alternative site were unavailing, after the estate sold the land to a local municipal water district, JSA entered into an arrangement with the water district for the use of a portion of the land for its transmitter site. Shortly thereafter, on November 25, 1996, JSA filed its Application to construct its new Class C1 facility, which currently remains pending. *See* Metro's Comments, pp. 2-3; Comments of JSA, filed May 5, 1997, and accompanying Declaration of Jerry Snyder. Therefore, JSA clearly has demonstrated that it still has an interest in the Channel 240C1 allotment to Mineral Wells.

⁴ In this case, JSA filed its Application for the Class C1 facility at Mineral Wells on November 25, 1996. The NPRM was not released until March 14, 1997.

WHEREFORE, in light of the foregoing, Metro Broadcasters-Texas, Inc. respectfully requests that this rulemaking proceeding be terminated because the Petition for Rulemaking filed by Hefel Broadcasting Corporation is patently defective, and that the application for a construction permit, filed November 25, 1996, by Jerry Snyder and Associates, Inc. be expeditiously GRANTED.

Respectfully submitted,

METRO BROADCASTERS-TEXAS, INC.

By: 
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February 12, 1998

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CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 12th day of February, 1998, copies of the foregoing Reply Comments were hand delivered or mailed first-class, postage pre-paid, to the following:

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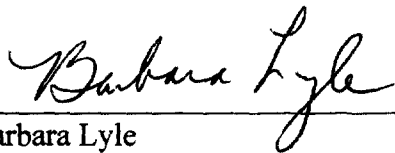
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